



Federal Communications Commission
Washington, D.C. 20554
APR 9 1998

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APR 13 1998

The Honorable Virgil Goode
U. S. House of Representatives
1520 Longworth House Office Building
Washington, D.C. 20515

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Congressman Goode:

Thank you for your inquiry on behalf of your constituent, John S. Bailey, Cumberland, Virginia, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in his community. Your constituent's letter refers to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comment on a Petition for Further Notice of Proposed Rule Making filed by the National Association of Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comment on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, your constituent's letter, and this response will be placed in the record of all three proceedings and will be given full consideration.

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At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,



for Steven E. Weingarten
Acting Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

cc: CWD

Dockets (2)

John Conwell

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VIRGIL H. GOODE, JR.
5TH DISTRICT, VIRGINIA

Congress of the United States
House of Representatives
Washington, DC 20515-4605

November 4, 1997

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The Honorable William Kennard
Chairman
Federal Communications Commission
1919 M Street, N. W.
Washington, D.C. 20554-0001

Dear Chairman Kennard:

I have communicated with your predecessor about my concern and the concern of many jurisdictions of the Fifth District with regard to the proposed FCC rule preempting local zoning and land use restrictions in connection with broadcast station transmission facilities. I have enclosed a copy of a letter that was sent to me by Mr. John S. Bailey, the County Administrator of Cumberland County, Virginia, regarding this issue. I think that he makes some very good points, and I hope that you will show them every consideration as you evaluate this proposal.

Sincerely yours,

Virgil Goode
Virgil H. Goode

VHGjr/scb
cc: Mr. John S. Bailey
County Administrator
County of Cumberland
P.O. Box 110
Cumberland, Virginia 23040-0110

County of Cumberland

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October 28, 1997

The Honorable Virgil H. Goode, Jr.
US House of Representatives
1520 Longworth House Office Building
Washington, DC 20515

Dear Congressman Goode:

The Cumberland County Board of Supervisors respectfully requests that Congress take immediate steps to reign in the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Congress and the courts have long recognized that zoning is a peculiarly local function. However, the proposed rules by the FCC are in direct contradiction with the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some citizens are concerned about the radiation from cellular towers, and certainly we cannot prevent them from mentioning their concerns during public meetings. However, in its rulemaking,

the FCC indicates that if any citizen raises this issue, then this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

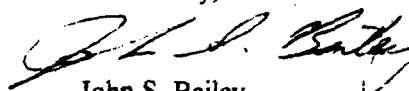
Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, the FCC is seeking to thwart the will of Congress and take zoning authority away from local government.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is also a poor approach. It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And, in a unique power grab, all appeals of zoning and permit denials would go to the FCC, not to the local courts.

The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority. I also suggest you speak with Robert Fogel at the National Association of Counties, 202-393-6226.

Sincerely,



John S. Bailey
County Administrator

cc: William F. Caton, FCC Acting Secretary